

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM**

EXECUTIVE SUMMARY FOR ACTION ON PETITION FOR RULEMAKING

Agenda # III.A.1

Agenda Item Summary: On July 13, 2005, the Montana Environmental Information Center and the Fort Belknap Community Council filed with the Board a petition to amend ARM 17.24.116.

Background: Under the Montana Administrative Procedure Act, § 2-4-315, MCA, an interested person may petition an agency requesting the adoption, amendment, or repeal of a rule. Upon receipt of the petition, the agency has 60 days to either deny the petition in writing or initiate rulemaking. If the agency denies the petition, its decision must be in writing and state the reasons for denying the petition based upon "record evidence." According to the statute, "record evidence" consists of any evidence submitted by the petitioners and other interested persons or agencies in response to the petition. The agency acting on the petition (in this case the Board) may conduct a hearing to assist in the development of a record and allow the petitioners and other interested persons to present their views.

Summary of Rules Requested by Petitioners: Under the Metal Mine Reclamation Act, an application for permit must contain a reclamation plan that meets the requirements of the Act and rules adopted under the Act. The proposed amendment would add to the Metal Mine Reclamation Act rules a requirement that the reclamation plan must conclusively demonstrate that, after the period for completion of reclamation provided by 82-4-336(3), no treatment of surface or ground water for carcinogens or toxins will be required to meet water quality standards at the point of discharge. Section 82-4-336(3) provides that "[i]n absence of an order by the department providing a longer period, the plan must provide that reclamation activities must be completed not more than 2 years after completion or abandonment of the operation on that portion of the complex."

Affected Parties Summary: The proposed new rules and rule amendments would affect operators of metal mines, which are all mines except those that mine coal, uranium, bentonite, clay, sand, gravel, peat, or soil materials.

Board Options: The Board may:

1. Grant the Petition based on record evidence and initiate rulemaking.
2. Deny the Petition in writing based upon record evidence.
3. Schedule and take action at a special meeting before the statutory deadline.
4. Request the petitioners to waive the statutory deadline for an amount of time sufficient to allow Board action at the next regularly scheduled meeting.

DEQ Recommendation: The Department has no recommendation, but Department personnel will be available to answer Board questions. The Department will submit a notice of proposed rulemaking to the Board prior to the meeting.

Enclosure: 1. Petition